

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LARRY GENE HEGGEM,

Plaintiff,

v.

MONROE CORRECTIONAL  
COMPLEX, DR. LOREN, DR. JOSEPH  
LOPIN, and L. MANIGO-HEDT,

Defendants.

No. C11-5985 RBL/KLS

**ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL**

Before the Court is Defendants' Motion for the Appointment of Counsel. ECF No. 73. Having carefully reviewed the motion and balance of the record, the Court finds that the motion should be denied.

**DISCUSSION**

No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is discretionary, not mandatory.”) However, in “exceptional circumstances,” a district court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional circumstances exist, the court must evaluate both “the likelihood of success on the merits [and] the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting

1 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he  
2 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to  
3 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d  
4 1101, 1103 (9<sup>th</sup> Cir. 2004).

5 That a *pro se* litigant may be better served with the assistance of counsel is not the test.  
6 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the issues  
7 involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of further  
8 facts during litigation. But, if all that was required to establish the complexity of the relevant  
9 issues was a demonstration of the need for development of further facts, then practically all cases  
10 would involve complex legal issues. *Id.*

11 Plaintiff asks the Court to “appoint counsel – if necessary.” He states that he is dying  
12 from late stage liver disease and that “they will not take you to the hospital until its too late!!”  
13 ECF No. 73. Plaintiff provides no evidence for these statements. Moreover, the Court has  
14 denied his request for temporary injunctive relief on these same grounds. ECF No. 54.

15 Plaintiff does not meet the criteria for the appointment of counsel and has not shown that  
16 he is unable to continue representing himself in this litigation. Plaintiff has demonstrated that he  
17 is able to articulate his claims in a clear fashion understandable to this Court. This case does not  
18 involve complex facts, or law. This case will not require the use of experts or any other in-depth  
19 analysis or argument. Plaintiff’s incarceration does not increase the complexity of his case.  
20 “Most actions require development of further facts during litigation and a *pro se* litigant will  
21 seldom be in a position to investigate easily the facts necessary to support the case. If all that  
22 was required to establish successfully the complexity of the relevant issues was a demonstration  
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1 of the need for development of further facts, practically all cases would involve complex legal  
2 issues.” *Wilborn*, 789 F.2d at 1331.

3 In addition, Plaintiff has made no showing that he is likely to succeed on the merits of his  
4 claim. Plaintiff has failed to demonstrate he meets the “exceptional circumstance” for an  
5 appointment of counsel in this case.

6 Accordingly, it is **ORDERED**:

7 (1) Plaintiff’s motion for counsel (ECF No. 73) is **DENIED**.

8 (2) The Clerk shall send a copy of this Order to Plaintiff.  
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11 **DATED** this 1st day of August, 2012.

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14 Karen L. Strombom  
15 United States Magistrate Judge  
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